

Wis., alleging that the article had been shipped on or about October 21, 1940, by Nu-Pak-EJ, Inc., from Chicago, Ill.; and charging that it was misbranded. It was labeled in part: "'Oomph' Candy and Reducing Program."

Analysis of a sample of the article showed that it consisted essentially of sugars, protein, fat, soybean flour, and small amounts of sodium chloride, phosphates, and calcium compounds.

The article was alleged to be misbranded in that representations in the labeling that it would be efficacious in the safe reduction of weight; that when used in conjunction with the dietary program included in the labeling, it would provide a proper method of "slenderizing" or losing excessive weight, were false and misleading since it would not be efficacious for such purposes.

It also was alleged to be misbranded under the provisions of the law applicable to foods, as reported in F. N. J. No. 2537.

On January 23, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

512. Misbranding of Mineralaid. U. S. v. 48 Packages of Mineralaid. Default decree of condemnation and destruction. (F. D. C. No. 4236. Sample No. 11250-E.)

On April 7, 1941, the United States attorney for the Southern District of Texas filed a libel against 48 packages of Mineralaid at Houston, Tex., alleging that the article had been shipped by W. L. Jameson from Denver, Colo., on or about March 17, 1941; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of silicates, small proportions of iron and calcium compounds, sulfates, a trace of fluorides, and nondescript organic matter.

The article was alleged to be misbranded in that statements in the labeling which represented that it would be efficacious to give the user health; that it would afford relief in cases of hay fever, asthma, sinus trouble, nervousness, arthritis, goiter, stomach ulcers, lumbago, anemia, prostate trouble, neuritis, disorders of the liver, kidney and bladder, cancer, acne, acidity, bronchial affections, diabetes, rundown conditions, poor hearing, infantile paralysis, stroke, heart leakage, partial paralysis, varicose veins, pyorrhea, colds, sciatica, rheumatism, hemorrhoids, cataracts, old-age ailments, ringworms and athlete's foot, pregnancy, pneumonia, and angina pectoris; and that it would reduce weight and correct dietary mineral deficiencies, were false and misleading since it would not be efficacious for such purposes.

On May 26, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

513. Misbranding of Merlek Mineral Water. U. S. v. 32½ Cases of Merlek Mineral Water. Trial by jury; verdict for the Government. Judgment of condemnation and destruction. (F. D. C. No. 2234. Sample No. 7399-E.)

On June 22, 1940, the United States attorney for the District of Arizona filed a libel against 32½ cases of Merlek Mineral Water at Phoenix, Ariz., alleging that the article had been shipped in interstate commerce on or about May 18, 1940, by Lee Bros. from Oakland, Calif.; and charging that it was misbranded.

Analysis showed that the article had the approximate composition of sea water. It was alleged to be misbranded in that the statement on the bottle label, "Merlek is sold only to help supply minerals for mineral deficiencies," was false and misleading as applied to an article that had the approximate composition of sea water. It was alleged to be misbranded further in that representations appearing in an accompanying circular entitled "Have You Eaten Today? Did You Get the Necessary Minerals?" which recommended it for persons who were "cross, tired, misbehaving, naughty," or suffering from nervous collapse, excess acid, run-down conditions, and many other diseases, and that it was valuable in the maintenance of health, for proper growth, for the teeth, for the blood and for life, were false and misleading when considered in the light of its composition and the dosage recommended.

It was also charged to be misbranded under the provisions of the law applicable to foods, as reported in F. N. J. No. 2824.

On July 20, M. E. Lee and Ned Johnson, claimants, filed an answer to the libel admitting the shipment in interstate commerce but denying that the product was a drug or that it was misbranded when shipped in interstate commerce. On December 10, 1940, the case came up for trial before a jury.

The taking of testimony was concluded on December 19, 1940, on which date the court delivered the following instructions to the jury: